

1. SCOPE

STATEWIDE CONTRACT FOR KENWOOD BRAND NAME PORTABLE RADIOS.

Portable radios are to operate on the LWIN (Louisiana Wireless Information Network) Statewide 700/800 MHz system.

All items must meet the following minimum specifications and functionality:

- Manufacturer must be approved by LSP Radio Communications representing Louisiana SIEC for the LWIN system.
- Must be able to operate on 700/800 MHz frequencies.
- Must be able to operate on conventional frequencies as well as on mutual aid frequencies.
- Must meet or exceed P-25 standards.
- Must meet or exceed Mil-specs standard.
- Must be FCC type accepted.
- Must have a minimum three (3) year manufacturer's warranty.

All items to be furnished must be the manufacturer's current state-of-the-art and must be certified to be in current new production. All items delivered under the contract must be new. Refurbished items are not acceptable for new purchases.

2. BID DELIVERY INSTRUCTIONS FOR STATE PROCUREMENT

Bidders are hereby advised that the U.S. Postal Service does not make deliveries to the Office of State Procurement physical location.

Bids may be mailed through the U.S. Postal Service to the Office of State Procurement box at:

Office of State Procurement
P.O. Box 94095
Baton Rouge, LA 70804-9095

If delivering by U.S. Postal Service to the P.O. Box listed above, please allow sufficient time for the mail to then be transmitted to the Office of State Procurement. The Office of State Procurement must receive the bid at its physical location by the date and time specified on page one (1) of the Invitation to Bid.

OR Bids may be delivered by hand or courier service to the Office of State Procurement physical location at:

Office of State Procurement
1201 North Third Street
Claiborne Building Suite 2-160
Baton Rouge, LA 70802

OR Bids may be submitted online by accessing the link on page one (1) of the Invitation to Bid.

Bidders should be aware of security requirements for the Claiborne Building and allow time to be photographed and presented with a temporary identification badge.

Bidder is solely responsible for ensuring that its courier service provider makes inside deliveries to the Office of State Procurement physical location. The Office of State Procurement is not responsible for any delays caused by the bidder's chosen means of bid delivery.

Bidder is solely responsible for the timely delivery of its bid. Failure to meet the bid opening date & time shall result in rejection of the bid.

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NOTE: Bidders who choose to respond to this bid online via the vendor portal are encouraged to not submit a written bid as well.

Bidders are hereby advised that due to the nature of the Internet, the State of Louisiana cannot guarantee that access to the LaGov or LaPac websites will be uninterrupted or that e-mails or other electronic transmissions will be sent to you or received by us. The Office of State Procurement is not responsible for any delays caused by the bidder's choice to submit their bid online. Bidder is solely responsible for the timely delivery of its' bid. Failure to meet the bid opening date and time shall result in rejection of the bid.

PUBLICIZING AWARDS: In accordance with L.A.C. 34:V.335, unsuccessful Bidders will be notified of the award provided that they submit with their bid a self-addressed stamped envelope requesting this information.

****Attention****

Receipt of a solicitation or award cannot be relied upon as an assurance of receiving future solicitations. In order to receive notifications of future solicitations from this office, you must register and enroll in the proper category in LaGov at the following website:

https://lagoverpvendor.doa.louisiana.gov/irj/portal/anonymous?quest_user=self_reg

Enrollment in LaGov provides LaPAC email notifications of bid opportunities based upon commodities that you select.

3. CALENDAR OF EVENTS

Deadline to Receive Written Inquiries: Thursday, April 22, 2021

Deadline to Answer Written Inquiries: Thursday, April 29, 2021

Bid Opening Date and Time: Thursday, May 6, 2021, 10:00 AM CT

NOTE: The State of Louisiana reserves the right to revise this calendar. Revisions before the bid opening date and time, if any, will be formalized by the issuance of an addendum to this ITB.

4. BIDDER INQUIRIES

The State shall not and cannot permit an open-ended inquiry period, as this creates an unwarranted delay in the procurement cycle and operations of our agency customers. The State reasonably expects and requires responsible and interested bidders to conduct their in-depth bid review and submit inquiries in a timely manner.

An inquiry period is hereby firmly set for all interested bidders to perform a detailed review of the ITB documents and to submit any written inquiries relative thereto. Without exception, all inquiries **MUST** be submitted in writing by an authorized representative of the bidder, clearly cross-referenced to the relevant ITB section. All inquiries must be received by the Inquiry Deadline date set forth in the Calendar of Events section of this bid. Only those inquiries received by the established deadline shall be considered by the State. Inquiries received after the established deadline shall not be entertained.

Inquiries concerning this ITB may be delivered by mail, express courier, e-mail, hand, or fax to:

Office of State Procurement
Attention: Dawn Frazier
P. O. Box 94095
Baton Rouge, LA 70804-9095

OR

1201 North Third Street
Claiborne Building, Suite 2-160
Baton Rouge, LA 70802

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E-mail: Dawn.Frazier@la.gov

Phone: (225) 342-5533

Fax: (225) 342-9756

Only the person identified above or their designee has the authority to officially respond to bidder's questions on behalf of the State. Any communications from any other individuals are not binding to the State.

An addendum will be issued and posted at the Office of State Procurement LaPAC* website, to address all inquiries received and any other changes or clarifications to the bid. Thereafter, all bid documents, including but not limited to the specifications, terms, conditions, plans, etc., will stand as written and/or amended by any addendum. No negotiations, decisions, or actions shall be executed by any bidder as a result of any oral discussions with any state employee or state consultant. It is the Bidder's responsibility to check the LaPAC website frequently for any possible addenda that may be issued. The Office of State Procurement is not responsible for a bidder's failure to download any addenda documents required to complete the bid.

*Note: LaPAC is the state's online electronic bid posting and notification system resident on State Procurement's website [<http://www.doa.la.gov/Pages/osp/Index.aspx>]. In that LaPAC provides an immediate e-mail notification to subscribing bidders that a solicitation and any subsequent addenda have been let and posted, notice and receipt thereof is considered formally given as of their respective dates of posting.

To receive the email notification, vendors must register in the LaGov portal. Registration is intuitive at the following link: https://lagoverpvendor.doa.louisiana.gov/irj/portal/anonymous?guest_user=self_reg

Help scripts are available on the Office of State Procurement website under vendor center at: <https://www.doa.la.gov/pages/osp/purchasing/vendorcenter.aspx>.

5. NUMBER OF COPIES OF BID

One (1) additional copy of the bid is desired.

6. ACCEPTANCE

Unless otherwise specified, bids on this contract will be assumed to be firm for acceptance for a minimum of sixty (60) days. If accepted, prices must be firm for the specified contract period.

7. NON-EXCLUSIVE CONTRACT

This agreement is non-exclusive and shall not in any way preclude state agencies from entering into similar agreements and/or arrangements with other vendors or from acquiring similar, equal or like goods and/or services from other entities or sources.

8. COOPERATIVE PURCHASE

It is the intent of the Office of State Procurement (OSP) to accommodate cooperative purchasing in any contract awarded from this solicitation.

As described below, Political Subdivisions of the State, Quasi State Agencies, External Procurement Units, and Agencies of the United States Government are to be authorized (potential) users of the contract(s) resulting from this solicitation, subject to the pricing and terms set forth in the contract(s).

- Political Subdivisions of the State include, but are not limited to, parish governments, municipal governments, school districts, human service districts, local governments and public utilities.

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- Quasi State Agencies include, but are not limited to, non-profit or for-profit organizations created by the State of Louisiana or any political subdivision or agency thereof, or any special district or authority, or unit of local government, to perform a public purpose.
- External Procurement Units include, but are not limited to, buying organizations not located in the State of Louisiana, which, if located in the State, would qualify as a public procurement unit.

The current list of approved cooperating purchasing entities (including political subdivisions, quasi state agencies and external procurement units) is maintained and regularly updated on the OSP website at: <http://www.doa.la.gov/pages/osp/contacts/approvedquasiunits.aspx> and may be used as a reference.

Bidders or contractors may prospectively choose to partially or entirely 'opt-out' of accommodating cooperative purchasing for such contract(s) by sending formal written notification of same to the Office of State Procurement. This notification should clearly specify which individual type(s) of cooperative purchasing entities the bidder/contractor is choosing to not allow to participate in contract cooperative purchasing. Any purchase orders received by the contract-holder from cooperative purchasing entities prior to the contract-holder's opt-out notification to OSP must be honored in accordance with the contract.

The extent of participation (or non-participation) by any vendor in cooperative purchasing will not affect the award of any contract(s) resulting from this solicitation.

9. LOUISIANA PREFERENCE

In accordance with Louisiana Revised Statutes 39:1604, a preference not to exceed ten percent (10%) may be allowed for products manufactured, produced, grown, or assembled in Louisiana of equal quality.

Do you claim this preference? YES _____

Specify line number(s): _____

Specify location within Louisiana where this product is manufactured, produced, grown or assembled:

Do you have a Louisiana Business Workforce? YES _____ NO _____

If so, do you certify that at least fifty percent (50%) of your Louisiana Business Workforce is comprised of Louisiana residents?

YES _____ NO _____

Failure to specify above information may cause elimination from preferences.

10. PROCUREMENT OF UNITED STATES PRODUCTS

In accordance with the provisions of La. R.S. 39:1604.7, in the event a contract is not entered into for products purchased under the provisions of La. R.S. 39:1604, each procurement officer, purchasing agent, or similar official who procures or purchases materials, supplies, products, provisions, or equipment under the provisions of this chapter may purchase such materials, supplies, products, provisions, or equipment which are manufactured in the United States, and which are equal in quality to other materials, supplies, products, provisions, or equipment, provided that all of the following conditions are met:

(1) The cost of such items does not exceed the cost of other items which are manufactured outside the United States by more than five percent (5%).

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(2) The vendor of such items agrees to sell the items at the same price as the lowest bid offered on such items.

(3) In cases where more than one (1) bidder offers items manufactured in the United States which are within five percent (5%) of the lowest bid, the bidder offering the lowest bid on such items is entitled to accept the price of the lowest bid made on such items.

(4) The vendor certifies that such items are manufactured in the United States.

For the purposes of this preference,

(1) "Manufactured in the United States" means produced by a process in which the manufacturing, final assembly, processing, packaging, testing, and any other process that adds value, quality, or reliability to assembled articles, materials, or supplies, occur in the United States.

(2) "United States" means the United States and any place subject to the jurisdiction of the United States.

Do you claim this preference? _____YES

Specify line number(s): _____

Specify location within the United States where this product is manufactured: _____

11. DELIVERY

Deliver to any agency of the State government eligible by State statute and/or authorized to purchase from the contract. Delivery is to be made upon the issuance of a purchase order.

Contractors will have access to an adequate supply of all items in order to meet deliveries of not more than ninety (90) business days.

12. TERMS AND CONDITIONS

This solicitation contains all terms and conditions with respect to the commodities herein. Any vendor contracts, forms, terms, or other materials submitted with bid may cause bid to be rejected.

The purchase order is the only binding document to be issued against the contract. Signing of Contractor's pre-printed forms is not allowed.

13. ORDERS

All State Agencies are directed to issue contract purchase orders for a supply of the items required, as and when needed. Political Subdivisions of the State and Quasi Agencies who have been authorized to purchase from contracts made by the Office of State Procurement, are directed to issue their regular purchase orders directly to the supplier, making reference to the contract and line item numbers.

14. QUANTITIES

This is an open-ended requirements contract. Quantities shown are based on the previous contract usage or estimates. Where usage is not available, a quantity of one (1) indicates a lack of history on the item. The successful bidder must supply at bid prices actual requirements as ordered whether the total of such requirements is more or less than the quantities shown.

15. INCREASE/DECREASE

The quantities listed herein are estimated to be the amount needed. In the event a greater or lesser quantity is needed, the right is reserved by the State of Louisiana to increase or decrease the amount, at the unit price stated in the bid.

16. PRICES

Prices shall be complete, including transportation/freight charges prepaid by bidder to destination, inside delivery, unpacking, assembly of all components and removal of all associated debris from premises. Prices should be quoted in the unit (each, box, case, hour, flat, mile, etc.) as specified in the solicitation.

17. FREIGHT CHARGES

Unit price must be inclusive of any freight charges. Bid should be F.O.B. Destination – title passing upon receipt of goods. Failure to comply with this requirement may disqualify your bid.

18. PAYMENT

Payment will be made on the basis of unit price as listed in the contract; such price and payment will constitute full compensation for furnishing and delivering the contract commodities. In no case will the state agency refuse to make partial payments to the Contractor although all items have not been delivered. This payment in no way relieves the contractor of his responsibility to effect shipment of the balance of the order. Payment will be to vendor and address as shown on order.

19. INVOICE

Invoices will be submitted by the Contractor to the using agency as indicated on the purchase order and the invoice should refer to the delivery ticket number, delivery date, purchase order number, quantity, unit price, net discount and delivery point. A separate invoice for each order delivered and accepted should be submitted by the Contractor in duplicate directly to the accounting department of the using Agency. Invoices shall show the amount of any cash discount and shall be submitted on the Contractor's own invoice form.

PAYMENTS WILL BE MADE TO THE VENDOR AND TO THE ADDRESS AS SHOWN ON THE PURCHASE ORDER. ADVANCED PAYMENTS WILL NOT BE ALLOWED IN THE CONTRACT.

20. LATE PAYMENTS

Interest due by a State Agency for late payments shall be in accordance with La. R.S. 39:1695 at the rates established in La. R.S. 13:4202.

21. ELECTRONIC VENDOR PAYMENT SOLUTIONS

In an effort to increase efficiencies and effectiveness as well as be strategic in utilizing technology and resources for the State and Contractor, the State intends to make all payments to Contractors electronically. The LaCarte Procurement Card will be used for purchases of \$5,000 and under, and where feasible, over \$5,000. Contractors will have a choice of receiving electronic payment for all other payments by selecting the Electronic Funds Transfer (EFT). If you receive an award and do not currently accept the LaCarte card or have not already enrolled in EFT, you will be asked to comply with this request by choosing either the LaCarte Procurement Card and/or EFT. You may indicate your acceptance below.

The **LaCarte** Procurement Card uses a Visa card platform. Contractors receive payment from state agencies using the card in the same manner as other Visa card purchases. Contractors cannot process payment transactions through the credit card clearinghouse until the purchased products have been shipped or received or the services performed.

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For all statewide and agency term contracts:

- Under the LaCarte program, purchase orders are not necessary. Orders must be placed against the net discounted products of the contract. All contract terms and conditions apply to purchases made with LaCarte.
- If a purchase order is not used, the Contractor must keep on file a record of all LaCarte purchases issued against this contract during the contract period. The file must contain the particular item number, quantity, line total and order total. Records of these purchases must be provided to the Office of State Procurement on request.

EFT payments are sent from the State's bank directly to the payee's bank each weekday. The only requirement is that you have an active checking or savings account at a financial institution that can accept Automated Clearing House (ACH) credit files and remittance information electronically. Additional information and an enrollment form is available by contacting the Office of Statewide Reporting & Accounting Policy at DOA-OSRAP-EFT@la.gov.

To facilitate this payment process, you will need to complete and return the EFT enrollment form.

If an award is made to your company, please check which option you will accept or indicate if you are already enrolled.

<u>Payment Type</u>	<u>Will Accept</u>	<u>Already Enrolled</u>
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LaCarte	_____	_____
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EFT	_____	_____
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Printed Name of Individual Authorized

Authorized Signature for payment type chosen

Date

Email address and phone number of authorized individual

22. CONTRACT PERIOD

The State of Louisiana intends to award all items for an initial period, not to exceed twelve (12) months. Delays in awarding, beyond the anticipated starting date, may result in a change in the contract period. If the situation occurs, an award may be made for less than twelve (12) months.

23. RENEWAL

At the option of the Office of State Procurement and acceptance by the Contractor, the contract may be extended for two (2) additional twelve (12) month periods at the same price, terms and conditions. Total contract time may not exceed thirty-six (36) months.

24. CONTRACT REVISIONS

Request for all revisions to the contract must be submitted in writing by the representative authorized to sign the execution of the bid sheet, unless otherwise stated herein:

I, _____, duly authorized to execute the contract, hereby delegate the following person/persons to submit written requests for revisions to the contract:

1.) _____, _____
(Name) (Title)

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2.) _____,
(Name) (Title)

3.) _____,
(Name) (Title)

Briefly state any restrictions as to type of revisions delegates may request.

COMMENT: _____

Requests for revisions to the contract must be addressed to the Office of State Procurement and shall refer to the contract item number with justification of the request. Distributor vendor changes, price reductions and item deletions may be considered during the contract period. New item additions may be considered only when the Office of State Procurement has determined additions will be of substantial benefit to the State and will justify the time, effort and cost required to make such addition.

Contractor must immediately notify the Office of State Procurement when any authorized distributor/channel partner on the contract is terminated, relocated, or added. All orders placed prior to receipt of such notification by the Office of State Procurement must be honored.

Revisions will become effective upon approval by the Office of State Procurement.

25. USAGE/REPORTING REQUIREMENTS

Brand Name Contracts for Portable Radios are expected to have \$50,000.00 usage annually. This usage amount may be waived in whole or in part due to extenuating circumstances, in the State's best interest. The Office of State Procurement will consider contract purchases from State Agencies, Quasi State Agencies and Political Subdivisions. The inability or failure to timely produce usage reports evidencing adequate sales may result in the cancellation of your brand name contract for a period of two (2) years.

The Contractor shall submit detailed contract usage reports **quarterly** to the State Procurement Analyst (SPA) for the contract in accordance with the below schedule. Initiation and submission of the quarterly reports to the SPA is the responsibility of the Contractor without prompting or notification by the SPA. If these reports are not submitted in a timely manner, the Office of State Procurement (OSP) shall have the right to terminate the contract.

The specific usage report content, scope, and format requirements are available on the OSP website under Purchasing/Vendor Center/Vendor Forms:

<http://www.doa.la.gov/pages/osp/vendorcenter/forms/index.aspx>.

In addition, the person's name who compiled the report and their contact information shall be provided. OSP reserves the right to request copies of any purchase orders issued against the contract.

The usage reports shall be submitted utilizing this format or an equivalent format that has been pre-approved by OSP.

Schedule for submittal of usage reports:

<u>Quarter</u>	<u>Reporting Period</u>	<u>Due Date</u>
First Quarter	July 1 through September 30	October 31
Second Quarter	October 1 through December 31	January 31
Third Quarter	January 1 through March 31	April 30
Fourth Quarter	April 1 through June 30	July 31

26. ADMINISTRATIVE FEE OR REBATE

The State shall be due a minimum 1% administrative fee or rebate to be payable to the State of Louisiana, Office of State Procurement (OSP) in exchange for the management and facilitation of the contract(s) resulting from this solicitation. The calculation of the administrative fee or rebate includes any entity receiving contract pricing resulting from the awarded contract(s). The administrative fee or rebate shall be submitted quarterly and shall be based on the total net (gross sales minus returns, credits and deductions) sales made to entities located in the State of Louisiana under the contract. Initiation and submission of the administrative fee or rebate to OSP is the responsibility of the Contractor without prompting or notification by the State Procurement Analyst (SPA). If these administrative fees or rebates are not submitted in a timely manner, OSP shall have the right to terminate the contract.

The check is to be made payable to: Louisiana DOA - Office of State Procurement. The check is to be mailed to the Office of State Procurement, Attn: OSP Receivables Specialist, either through the U. S. Postal Service to OSP's box at: P. O. Box 94095, Baton Rouge, LA 70804-9095, or through a courier service to OSP's physical location at: 1201 North 3rd Street, Suite 2-160, Baton Rouge, LA 70802. The calculation of the administrative fee or rebate shall begin immediately upon execution of the contract and payment shall be made in accordance with the following schedule:

<u>Quarter</u>	<u>Payment Period</u>	<u>Payment Due Date</u>
First Quarter	July 1 through September 30	October 31
Second Quarter	October 1 through December 31	January 31
Third Quarter	January 1 through March 31	April 30
Fourth Quarter	April 1 through June 30	July 31

IF VENDOR/CONTRACTOR IS OFFERING A GREATER ADMINISTRATIVE FEE OR REBATE THAN SPECIFIED ABOVE, PLEASE INDICATE THE PERCENTAGE HERE: _____%

NOTE: CONTRACTOR SHALL INDICATE THE STATE CONTRACT NUMBER ON THE REMITTANCE. WHEN SUBMITTING ONE (1) REMITTANCE FOR MORE THAN ONE (1) CONTRACT, CONTRACTOR SHALL INDICATE ALL STATE CONTRACT NUMBERS AND THE AMOUNT FOR EACH.

27. CONTRACTOR'S RESPONSIBILITY

During the course of the contract, any price reduction in the Manufacturer's Published Prices must be immediately extended to the State by the Contractor. Failure to offer the benefit of these price reductions to the State within two (2) weeks after general announcement may result in the cancellation of the contract. These price reductions must be granted on any order not shipped. Contractor must maintain a list of equipment on order and be able to provide a list to the Office of State Procurement within forty-eight (48) hours of the request.

Only brand names and numbers stated in the award are approved for delivery under the contract and any substitution must receive prior written approval of the Office of State Procurement.

Vendor List: The bidder who signs the bid will be designated as prime contractor on any contract resulting from this solicitation. If additional distributor vendors are authorized to receive orders for items contained in said contract, the bidder should submit with the bid, a list of those additional authorized distributors including the complete business address. The prime contractor will be responsible for the actions of any distributor vendors listed. Please see form on Page 14.

Single Point of Contact:

At a minimum, the Contractor shall assign one (1) person and at least one (1) backup within the Contractor's organization to serve as a primary contact person for contract related activities. These activities include but are not limited to: resolution of contract issues, all pre-sale and post-sale activities, including system configuration and implementation, order processing and status, billing-related issues, operating feature and function questions of the products on contract, training coordination. This designated contact person should be prepared to handle routine tasks, answer inquiries, and resolve problems that arise on a daily basis. The Contractor shall designate this single point of contact within fourteen (14) business days of award. The Contractor shall keep the contact list current during the term of the contract and provide updates to the Office of State Procurement.

28. WARRANTY

The contractor shall provide the standard warranty offered by the manufacturer for the products bid.

29. CONTRACT UTILIZATION

By submitting a bid, bidder acknowledges that he agrees to the following terms that will be part of any resulting contract(s) awarded from this solicitation:

The contract has been designated as a Louisiana Pricing Schedule ("LaPS"). The state intends to use the following process before placing orders under the contract, and the contractor explicitly understands and agrees to the use of this process before accepting orders under the contract. Where multiple LaPS contracts exist for functionally equivalent products and/or services and the procurement is above \$25,000.00, all eligible users of these contracts will utilize the following procedures:

- 1) Prepare a Request for Responses (an informal process used to make a best value determination) that includes, if applicable:
 - A) Performance-based statement of work that includes such things as:
 - The work to be performed
 - Location of work
 - Period of Performance
 - Deliverable schedule
 - Applicable performance standards
 - Acceptance criteria
 - Any special requirements (e.g., security clearances, special knowledge, etc.)
 - The products required (using a generic description of products and functions whenever possible).
 - B) If necessary or applicable, a request for submittal of a project plan for performing the task and information on the contractor's experience and/or past performance performing similar tasks.
 - C) A best value determination is one that considers, in addition to underlying contract pricing, such factors as:
 - Probable life of the item selected
 - Environmental and energy efficiency considerations
 - Technical qualifications
 - Delivery terms
 - Warranty
 - Maintenance availability
 - Administrative costs
 - Compatibility of an item within the user's environment
 - User's familiarity with the item or service
 - D) A request for submittal of a firm-fixed total price for labor and/or products which are no higher than prices in the LaPS contract.
- 2) Submit the Request for Response to at least three (3) LaPS contract holders, whenever available, offering functionally equivalent products and/or services that will meet the agency's needs.
- 3) Evaluate responses and select the contractor to receive the order:
 - A) After responses have been evaluated, the order shall be placed with the contractor that represents the best value that meets the agency's needs. The ordering agency should give preference to small entrepreneurship or small and emerging businesses when two (2) or more contractors can provide the services and/or products at the same firm-fixed price.

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- B) The ordering agency shall document in the procurement file the evaluation of the contractors' responses that formed the basis for selection. The documentation shall identify the contractor from which the services and/or products were purchased, the services and/or products purchased, and the cost of the resulting purchase order.
- C) Purchases shall not be artificially divided to avoid the requirements of this section when recurring requirements for same products are known.

30. INDEMNIFICATION AND LIMITATION OF LIABILITY

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State from suits, actions, damages and costs of every name and description relating to personal injury and damage to property caused by Contractor, its agents, employees, partners or subcontractors, in the performance of this contract without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

Contractor shall indemnify, defend and hold the State harmless, **without limitation**, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be fully assessed against the State in any action for infringement of a United States Letter Patent with respect to the products, materials or services furnished by Contractor under its bid response and the contract, or of any copyright trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: (i) State's unauthorized modification or alteration of the products or materials; (ii) State's use of the products or materials in combination with other products or materials not furnished by Contractor; (iii) State's use of the products or materials in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the State's exclusive remedy to take action no later than six (6) months after the issuance of an injunction in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part(s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the product or material. Any injunction that is issued against the State which prevents the State from utilizing the Contractor's product in excess of six (6) months and for which the Contractor has not obtained for the State or provided to the State one of the alternatives set forth in the foregoing sentence is cause for the State to terminate the contract. In the event of such termination, the State will not be obligated to compensate the Contractor for any costs incurred by the Contractor.

For all other claims against the Contractor where liability is not otherwise set forth in the contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability **for direct damages, shall be the greater of \$100,000, the dollar amount of the products or materials, or two (2) times the charges for services rendered by the Contractor under the contract.** Unless otherwise specifically enumerated herein mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records, even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

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The State may, in addition to other remedies available to it at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

31. ASSIGNMENT

The Contractor shall not assign any interest in the contract by assignment, transfer or novation without prior written consent of the State. This provision shall not be construed to prohibit the Contractor from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

32. RIGHT TO AUDIT

The State Legislative auditor, federal auditors and internal auditors of the Division of Administration, or others so designated by the DOA, shall have the option to audit all accounts directly pertaining to the contract for a period of five (5) years from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.

33. TERMINATION FOR NON-APPROPRIATION OF FUNDS

The continuation of the contract is contingent upon the continuation of an appropriation of funds by the Legislature to fulfill the requirements of the contract. If the Legislature fails to appropriate sufficient monies to provide for the continuation of a contract or if such appropriation is reduced by the veto of the Governor or by any means provided in the Appropriations Act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriations for the year from exceeding revenues for that year or for any other lawful purpose and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which funds were appropriated.

34. WAIVER CLAUSE

Waiver of any breach of any term or condition of the contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of the contract shall be held to be waived, modified, or deleted except by the written consent of both parties.

35. SEVERABILITY

If any term or condition of the contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end, the terms and conditions of the contract are declared severable.

36. CODE OF ETHICS

The Contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (La. R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of products/services called for in the Contract. The Contractor agrees to immediately notify the State if potential violations of the Code of Governmental Ethics arise at any time during the term of the Contract.

37. APPLICABLE LAW

The contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to the contract shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

38. CONTRACT CONTROVERSIES

Any claim or controversy arising out of the contract shall be resolved by the provisions of Louisiana Revised Statutes 39:1673.

38. METHOD OF AWARD

Award to be made on an all or none basis to the overall lowest responsive, responsible bidder meeting the specifications. The State of Louisiana reserves the right to reject individual line items from the regional award, and to reject any and all bids and to waive informalities.

BIDDER'S RESPONSE PAGE

Vendor List - Authorized Distributors:

Please list complete name, business address, phone number, fax number, email address, etc. of all vendors who are authorized to accept purchase orders against the contract.

